

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
April 13, 2005 Session

**STATE OF TENNESSEE v. CLINTON CURTIS BOYD**

**Appeal from the Circuit Court for Davidson County**  
**No. 2003-T-5     Carol Soloman, Judge**

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**No. M2003-02557-COA-R3-CV - Filed May 17, 2005**

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Clinton Curtis Boyd was charged with violation of Tenn. Code Ann. § 55-10-406(3) – the so-called “implied consent law” – for refusing to take a test to determine his blood alcohol content when he was arrested for driving under the influence of an intoxicant. A jury found him not guilty of DUI while the trial judge, sitting without a jury, found that the defendant violated the implied consent law when he refused to take a “breath test” and revoked his license. Boyd appeals claiming the procedure required by Tenn. Code Ann. § 55-10-406(3) violates the separation of powers clauses of the Tennessee and United States constitutions because, he contends, it requires the trial judge to serve as an administrative officer of the Tennessee Department of Safety. Finding the issue was resolved in *Goats v. State*, 364 S.W.2d 889 (Tenn. Crim. App. 1963), which held that such a procedure did not violate the separation of powers clauses, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, J., and DONALD P. HARRIS, SR. J., joined.

V. Michael Fox, Nashville, Tennessee, for the appellant, Clinton Curtis Boyd.

Paul G. Summers, Attorney General & Reporter; Michael E. Moore, Solicitor General; and Lizabeth A. Hale, Assistant Attorney General, for the appellant, State of Tennessee.

**MEMORANDUM OPINION<sup>1</sup>**

Tenn. Code Ann. § 55-10-406(3) is referred to as the implied consent law because all persons who are granted the privilege of operating a motor vehicle are deemed to have consented to take a

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<sup>1</sup>Tenn. Ct. App. R. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

test for the purpose of determining the alcoholic or drug content of their blood when they are suspected of driving under the influence. A condition precedent for such a test is that the arresting officer has reasonable grounds to believe the person was driving while under the influence of an intoxicant or drug. Tenn. Code Ann. § 55-10-406(a)(3), the implied consent law, provides in pertinent part:

If such person having been placed under arrest and thereafter having been requested by a law enforcement officer to submit to such test and advised of the consequences for refusing to do so, refuses to submit, the test shall not be given, and such person shall be charged with violating this subsection. The determination as to whether a driver violated the provisions of this subsection shall be made at the same time and by the same court as the one disposing of the offense for which such driver was placed under arrest. If the court finds that the driver violated the provisions of this subsection, except as otherwise provided in this subdivision, the driver shall not be considered as having committed a criminal offense; however, the court shall revoke the license of such driver for a period of . . . .

The trial judge found that the arresting officer had reasonable grounds to believe that Mr. Boyd was driving while under the influence of an intoxicant or drug, that he refused to take the test and, therefore, that Mr. Boyd violated the implied consent law.<sup>2</sup> As a consequence, the trial court imposed a one-year suspension of his driver's license.

Mr. Boyd contends that Tenn. Code Ann. § 55-10-406(3) is unconstitutional because it requires the judge in a criminal proceeding to also serve as an administrative officer of the Tennessee Department of Safety and rule on the civil charge of the alleged violation of the implied consent law. We find the issue to be without merit because it has already been resolved by the Court of Criminal Appeals in *Goats v. State*, 364 S.W.2d 889 (Tenn. Crim. App. 1963). That court held that the implied consent law<sup>3</sup> did not violate the separation of powers clause. The court specifically noted that the legislature could lawfully authorize courts to determine whether a person had violated conditions that were imposed at the time the driver's license was granted and to suspend or revoke that privilege as a penalty. The court said, in pertinent part:

Conviction under this Code Section with the right of the trial judge to prohibit the person from driving is a judicial act and it has no relation whatever to the preceding sections governing the Department of Safety's power to grant, revoke and suspend

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<sup>2</sup>Mr. Boyd was arrested on April 9, 2002 for allegedly driving under the influence of an intoxicant and for violating the implied consent law, Tenn. Code Ann. § 55-10-406(3). He was indicted on both charges by a Davidson County grand jury. Both counts were tried together; however, the jury only considered the issue of the defendant's guilt or innocence for allegedly driving under the influence of an intoxicant. The trial judge, sitting without a jury, determined the defendant's fate concerning the implied consent charge.

<sup>3</sup>The statute at issue in *Goats* was an earlier generation of the current implied consent law, but the differences in the statutes do not affect the ruling.

licenses. Section 59-1035, T.C.A., also goes into penalties for second and third offenses, etc., and embodies in it Chapter 100 of the Acts of 1955, which expressly says that a conviction under the section now being talked about shall in no way affect the powers of the Safety Department suspension and revocation under the other sections.

*Goats*, 364 S.W.2d at 891. We agree and therefore affirm the judgment of the trial court.

Following oral argument, the State of Tennessee filed a motion requesting that the matter be rescheduled for another hearing. The basis for the motion was understandable. The Clerk inadvertently failed to notify the State's counsel of the setting of the oral argument. Nevertheless, since we have rendered a decision favorable to the State of Tennessee, there is no prejudice to the State and therefore no need to conduct another hearing. Thus, the motion is respectfully denied.

We affirm the judgment of the trial court and this matter is remanded with costs of appeal assessed against the appellant, Clinton Curtis Boyd.

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FRANK G. CLEMENT, JR., JUDGE